

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:06CV79-01-MU

JAMES A.G. BUNCH, JR.,

Plaintiff,

v.

STATE OF NORTH CAROLINA, et al.,

Defendants.

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ORDER

THIS MATTER is before the Court upon Plaintiff's Complaint Pursuant to 42 U.S.C. § 1983, filed February 22, 2006.

Plaintiff has filed a Complaint on a 42 U.S.C. § 1983 form against the State of North Carolina and Rick Jackson, the superintendent of the correctional facility where he is incarcerated, asserting that the North Carolina Supreme Court abused its discretion by dismissing without comment his petition for discretionary review in his state court criminal case when he had "complained colorably that he was tried and convicted . . . when the court clearly lacked jurisdiction to try any of the cases." For a remedy, Plaintiff seeks to have this Court vacate his state court criminal convictions and remand his case to the Hertford County Superior Court with instructions to dismiss his case.

Because Plaintiff is seeking to overturn his state court conviction, his claim is most properly brought as a habeas claim rather than a § 1983 claim. However, as indicated on the North Carolina Supreme Court's Order attached by Plaintiff to his Complaint, Plaintiff was convicted and sentenced

in Hertford County. Pursuant to the provisions of Section 2241(d) of Title 28 of the United States Code, and in accordance with a joint order of the United States District Courts for the Eastern, Middle, and Western Districts of North Carolina, a habeas action should be filed in the district within which the state court was held which convicted and sentenced Plaintiff. Consequently, any habeas action pursuant to 28 U.S.C. § 2254 filed by Plaintiff must be done so in the United States District Court for the Eastern District of North Carolina. Consequently, because a habeas filing would be dismissed for venue reasons by this Court, this Court declines to go through the motions of converting Plaintiff's filing.

THEREFORE IT IS HEREBY ORDERED that Plaintiff's Complaint pursuant to 42 U.S.C. § 1983 is **DISMISSED**.

Signed: March 2, 2006

A handwritten signature in black ink, appearing to read "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

